

T.R.A. DOCKET ROOM

July 23, 2005

Mr. Ron Jones, Chairman
Tennessee Regulatory Agency
460 James Robertson Parkway
Nashville, TN 37243-0505

Received
RON JONES

JUL 27 2005

TN Regulatory Authority

Dear Mr. Jones:

This letter submits my comments regarding the draft rules relating to Chapter 1220-4-12, Wastewater Regulations as proposed under TRA Docket No. 05-00105. I am a consulting engineer who designs decentralized sewerage systems for developers and property owners. My comments are presented specifically referenced to the appropriate rule number.

1220-4-12-.04 (b) Data To Be Filed With The Authority

I concur that certification of construction by the design engineer should be acceptable to both TDEC and TRA. However, that certification implies that the construction was inspected by the design engineer at sufficient frequencies to allow him to make such certification. Not all private clients will pay for that inspection. Competent engineers will not certify construction they have not inspected.

1220-4-12.05 (1) Maps And Records

TDEC has proposed and TRA staff has concurred that the Utility should be required to own or lease the land on which the system is located. I do not concur. The rule should require only that the utility own the system components and have perpetual control and access (through easements or leases) to the lands on which the components are located. The sewerage system includes tanks on private lots, sewers in right-of-ways or on easements, and treatment/dispersal areas. It is not practical for utilities to own land on which the building tanks or common sewers are located. Historically in the public utility industry, these have been covered by easements.

Many of my clients do not wish to transfer ownership of the large tracts associated with the treatment and drip dispersal sites as this action would remove the acreage from the

When 0.6 acre lots are valued at \$60,000 - \$150,000, the loss of even a few acres of land from the density calculation is of great significance to developers. In these cases, a perpetual easement is granted to the utility. This provides the utility complete control of the land so long as the sewerage system is in service. It also allows the developer to retain ownership of the land and use it as green space in his density determinations.

If leasing is to be allowed or encouraged, I assume the utility rate base will have to be tailored for every project to account for the different levels of negotiated lease rates.

1220-4-12.06 (1) Adequacy Of Facilities

I concur with the intent of this statement. However, it may require major change in TDEC regulations and a more enforceable description of construction codes and industry standards. Currently, the state enforces multiple wastewater regulations, essentially all of which are prescriptive in nature. These types of regulations dictate size, shape, configuration, etc. of treatment systems. Many systems designed in accordance with these prescriptive regulations fail or do not meet effluent limitations. Since the state does not guarantee performance of systems designed to meet its prescriptive requirements, the owner is left without recourse.

These prescriptive regulations should be replaced with performance regulations that dictate the level of performance required for various levels of wastewater systems, regardless of their design. TDEC and the other agencies with authority can then devote resources to evaluation of the adequacy of performance. Responsibility for eliminating failing or non-performing systems can then be enforced against the owner, designer, and installer where it belongs.

1220-4-12.13 Denying Or Discontinuing Service

This rule establishes conditions and some procedures for denying or discontinuing service. Regarding discontinuation of service for non-payment of the monthly sewer bill, the rule is silent on how many unpaid bills must accrue before the utility can discontinue service. In fact, subsection (5)(g) of the rule allows service to continue unpaid indefinitely if the customer appeals discontinuation of service to the TRA.

The utility is authorized to hold a security deposit equal to about 85% of two-months of sewer bills. That deposit is required to be returned to the customer after one year of

satisfactory payment history. After that, the utility has no protection against unpaid sewer bills. I recommend the following:

1. Make security deposits permanent and require that they be applied to the last month's bill when discontinuation of service has been requested by the customer, or applied to the outstanding bill when the customer skips without paying.
2. Allow service to be discontinued by the utility anytime a customer has missed two-consecutive monthly sewer bill payments and after all required notices have been made.

Thank you for the opportunity to comment on the draft rules. If there are any questions, please call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hines", with a stylized flourish at the end.

Michael Hines, M.S., P.E.
Founding Principal